

*Clover Ridge Village Condominium Association v.  
The Phoenix Insurance Company*

**EXHIBIT A TO NOTICE OF REMOVAL**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT

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Case Type: Contract

Clover Ridge Village Condominium  
Association,

Court File No.: \_\_\_\_\_  
Judge: \_\_\_\_\_

Plaintiff,

vs.

**SUMMONS**

The Phoenix Insurance Company,

Defendant.

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THIS SUMMONS IS DIRECTED TO: **The Phoenix Insurance Company, One Tower Square, Hartford, CT 06183.**

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no Court file number on this Summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at Smith Jadin Johnson, PLLC, 7900 Xerxes Avenue South, Suite 2020, Bloomington, MN 55431.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A Default Judgment can then be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

**SMITH JADIN JOHNSON, PLLC**

Dated: November 23, 2021

/s/ Bradley K. Hammond  
Alexander M. Jadin (#0387219)  
Bradley K. Hammond (#391611)  
7900 Xerxes Avenue, Suite 2020  
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STATE OF MINNESOTA

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Case Type: Contract

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Clover Ridge Village Condominium  
Association,

Court File No.: \_\_\_\_\_  
Judge: \_\_\_\_\_

Plaintiff,

vs.

**COMPLAINT**

The Phoenix Insurance Company,

Defendant.

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Plaintiff Clover Ridge Village Condominium Association, as and for its Complaint against Defendant, The Phoenix Insurance Company, states and alleges as follows:

**PARTIES**

1. That Plaintiff, Clover Ridge Village Condominium Association (“Clover Ridge” or “Plaintiff”) is a multi-unit association that owns and operates real property generally located at 1962 Siefert Street, Chaska, Minnesota and 2110 Schoolmaster Drive, Chaska, Minnesota (the “Property”) in Carver County, Minnesota.
2. That Defendant, The Phoenix Insurance Company (“Phoenix” or “Defendant”), is a foreign insurance company licensed and authorized to sell insurance and transact business in the State of Minnesota with a registered agent for service of process at One Tower Square, Hartford, Connecticut 06183.
3. Because the Property is located in Carver County, Minnesota, the above-named Court has jurisdiction over this matter.

**FACTS**

4. Phoenix issued an insurance policy to Clover Ridge (Policy No.: XXX-XXXX0017) that provides coverage for property damage incurred by the insured, subject to the terms and conditions of the Policy and pursuant to the minimum requirements of Minn. Stat. § 65A.01 and Minn. Stat. § 65A.26.
5. That Property sustained severe damage from a hail and windstorm that occurred on or about June 11, 2017 (the “Loss”).
6. That Clover Ridge submitted a claim to Phoenix for the Loss, which was assigned a claim number by Phoenix (the “Claim”).
7. The first written notice of loss was December 7, 2018.
8. That the parties were unable to reach a resolution to the Claim and on or about April 11, 2019, Clover Ridge demanded appraisal pursuant to the Policy, Minn. Stat. § 65A.26, and Minn. Stat. § 65A.01.
9. On or about August 9, 2019, Plaintiff commenced litigation against Phoenix in the First Judicial District Court located in Carver County, Minnesota for breach of contract and declaratory judgment seeking to resolve the Claim through appraisal (“2019 Lawsuit”).
10. On or about August 29, 2019, Phoenix removed the 2019 Lawsuit to the United States District Court for the District of Minnesota, captioned Clover Ridge Village Condominium Association v The Phoenix Insurance Company, Court File No. 19-02378 (WMW/BRT).
11. On or about November 15, 2019, the 2019 Lawsuit was dismissed via stipulation after the parties agreed to appraise the Loss.

12. On or about July 22, 2021, the Appraisal Panel published an Appraisal Award awarding Plaintiff an amount totaling \$150,066.40 (actual cash value ("ACV")) and \$1,338,603.50 (replacement cost ("RCV")).
13. On or about July 30, 2021, Phoenix paid the ACV awarded by the Appraisal Panel subject to the policy deductible.
14. On or about November 16, 2021, Phoenix paid the remaining amount of the Appraisal Award thereby resolving the Claim.
15. On or about August 6, 2021, Plaintiff demanded payment of pre-award interest in the amount of \$269,690.02 pursuant to Minn. Stat. §549.09, which was denied by Phoenix.

#### **COUNT I – DECLARATORY JUDGMENT**

16. Plaintiff restates and realleges each of the foregoing paragraphs as though fully set forth herein and further states and alleges as follows.
17. This matter is brought pursuant to the Uniform Declaratory Judgment Act, Minn. Stat. § 555.01, *et seq.*
18. Plaintiff seeks a judicial determination of its rights under Minn. Stat. § 549.09 and its application to the July 22, 2021 Appraisal Award.
19. There is a real and justiciable controversy between Plaintiff and Defendant regarding the amount of pre-award interest owed to Plaintiff.
20. Plaintiff is entitled to pre-award interest on the July 22, 2021 Appraisal Award pursuant to Minn. Stat. § 549.09 in the amount of \$269,690.02.
21. The calculation for pre-award interest is as follows:

**PREAWARD INTEREST**

|   |                       |
|---|-----------------------|
| <b>Principal</b> (\$1,338,603.50 (RCV) - \$312,150.36 (deductible)) | <b>\$1,026,453.14</b> |
| <b>Rate</b> (annual rate per Minn. Stat. §549.09)                   | <b>10%</b>            |
| X <b>Time</b> (December 7, 2018 to July 22, 2021)                   | <b>959 days</b>       |
| <b>Interest</b>   | <b>\$269,690.02</b>   |

22. To date, Defendant has not paid any pre-award interest to Plaintiff and denies that Plaintiff is entitled to interest.

WHEREFORE, Plaintiff prays for judgment of the Court against Defendant for the following relief:

1. That pursuant to Minn. Stat. § 549.09 Plaintiff is entitled to declaratory judgment awarding pre-award interest on the Appraisal Award in the amount of \$269,690.02;
2. An award of costs and disbursements; and
3. For such other and further relief as this Court deems just and equitable.

**SMITH JADIN JOHNSON, PLLC**

Dated: November 23, 2021

/s/ Bradley K. Hammond  
 Alexander M. Jadin (#0387219)  
 Bradley K. Hammond (#391611)  
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*Attorneys for Plaintiff*

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that costs, disbursements and reasonable attorneys and witness fees may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in these pleadings are asserted.

/s/ Bradley K. Hammond  
 Bradley K. Hammond (#391611)